

Bureau of Industry and Security, Commerce

§ 740.12

(G) Controlled by 9D001, specially designed or modified for the “development” of “technology” controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) “Technology”, as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) Controlled by 4E001, specially designed for the “development” or “production” of “digital computers” controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(C) Controlled by 5E001.a for the “development” or “production” of digitally controlled radio receivers controlled by 5A001.b.5; or 5D001.a for “software” specially designed for the “development” or “production” of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the “development” of equipment or “software” in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6E008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the “production” of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6E008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [Reserved]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the “development” of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology Note for the “production” of equipment in 6A002.a.1.c; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

[61 FR 64281, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25457, May 9, 1997; 63 FR 2456, Jan. 15, 1998; 63 FR 42228, Aug. 7, 1998; 63 FR 50522, Sept. 22, 1998; 63 FR 55019, Oct. 14, 1998; 64 FR 27141, May 18, 1999; 64 FR 40108, July 23, 1999; 64 FR 42012, Aug. 3, 1999; 65 FR 43132, July 12, 2000; 65 FR 60855, Oct. 13, 2000; 67 FR 10614, 10610, Mar. 8, 2002; 68 FR 10589, 10590, Mar. 5, 2003; 68 FR 68979, Dec. 10, 2003]

§ 740.12 Gift parcels and humanitarian donations (GFT).

(a) *Gift parcels*—(1) *Scope*. The provisions of paragraph (a) authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of “gift parcel.”

NOTE TO PARAGRAPH (a) OF THIS SECTION: A gift parcel, within the context of this paragraph (a), does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, if subject to the General Prohibitions described in § 734.2(b) of the EAR, must be licensed by BIS. (See Supplement No. 2 to part 748 of the EAR for licensing of multiple gift parcels).

(2) *Commodity, value and other limitations*—(i) *Eligible commodities*. The eligible commodities are as follows:

(A) The commodity must not be controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP) (see Commerce Control List, part 774 of the EAR); and

(B) The commodity must be of a type and in quantities normally given as gifts between individuals.

(1) For Cuba, the only commodities that may be included in a gift parcel are the following items: food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and in addition receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment.

(2) For all other destinations, eligible commodities include all items described in paragraph (a)(2)(i)(B)(1) of this section as well as all other items normally sent as gifts. Gold bullion, gold tael, and gold bars are prohibited as are items intended for resale or re-export.

Example to paragraph (a) of this section. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not qualify for such gift parcels because the quantity exceeds that normally given between individuals. Similarly, a sewing machine or bicycle, within the dollar limits of this License Exception, may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

(3) For purposes of paragraph (a)(2)(i)(B) of this section, clothing is appropriate, except that export of military wearing apparel to Country Group D:1 or E:2 under this License Exception is specifically prohibited, regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed.

(ii) *Import requirements.* The commodities must be acceptable in type and quantity by the recipient country for import as gifts. Commodities exceeding the import limits may not be included in gift parcels.

(iii) *Frequency.* Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month. Parties seeking authorization to exceed this limit due to

compelling humanitarian concerns (e.g., gifts of medicine to relatives) should submit a license application (BIS-748P) with complete justification.

(iv) *Value.* The combined total domestic retail value of all commodities included in a gift parcel may not exceed \$400, except for gift parcels to Cuba where the value of non-food items may not exceed \$200. There is no dollar value limit on food contained in a gift parcel to Cuba.

(3) *How to export gift parcels.* (i) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(ii) Each parcel must have the notation "GIFT—Export License Not Required" written on the addressee side of the package and the symbol "GFT" written on any required customs declaration.

(b) *Humanitarian donations—(1) Scope.* The provisions of paragraph (b) authorize exports or reexports by groups or organizations of donations to meet basic human needs when those groups or organizations have experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(2) *Basic human needs.* Basic human needs are defined as those requirements essential to individual well-being: health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence.

(3) *Eligible donors.* Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities and software to the intended beneficiaries. Eligible distribution arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the

receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff; or

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place.

(4) *Donations.* To qualify for export under the provisions of this paragraph (b), the items must be provided free of charge to the beneficiary. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this paragraph (b).

(5) *Ineligible commodities and software.* The following commodities and software are not eligible:

(i) Commodities and software controlled for national security, chemical or biological weapons, and nuclear non-proliferation, missile technology or crime control reasons (see Supplement No. 1 to part 774 of the EAR);

(ii) Exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants; or

(iii) Exports to Cuba of medical items excluded by § 746.2(a)(3) of the EAR.

(6) *Eligible items.* Eligible commodities and software are those listed in Supplement No. 2 to part 740.

(7) *Additional recordkeeping requirements.* In addition to the recordkeeping requirements in part 762 of the EAR, donors must keep records containing the following information:

(i) The donor organization's identity and past experience as an exporter of goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative pro-

grams and the projected annual value of exports of humanitarian donations.

[61 FR 64282, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 62 FR 25458, May 9, 1997]

§ 740.13 Technology and software—unrestricted (TSU).

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); "mass market" software subject to the General Software Note; and encryption source code (and corresponding object code) that would be considered publicly available under § 734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

(a) *Operation technology and software—(1) Scope.* The provisions of paragraph (a) permit exports and reexports of operation technology and software. "Operation technology" is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products that are lawfully exported or reexported under a license, a License Exception, or NLR. The "minimum necessary" operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the product. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology.

(2) *Provisions and destinations—(i) Provisions.* Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) *Destinations.* Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.